

立法會

Legislative Council

Summary of facts and sentences of certain judicial decisions concerning desecrating the national flag and regional flag

Case name	<i>HKSAR v NG Kung Siu and LEE Kin Yun</i> (FACC 4/1999, on appeal from HCMA 563/1998)	<i>HKSAR v KOO Sze Yiu and MA Wan Ki</i> (HCMA 482/2013, on appeal from ESCC 918/2013)	<i>HKSAR v KOO Sze Yiu</i> (HCMA 185/2013, on appeal from ESCC 368/2013)	<i>HKSAR v CHENG Chung-tai</i> (ESCC 1139/2017)
Date of offence	1 January 1998	1 April 2012	<u>Charges 1 and 2</u> 10 June 2012 <u>Charges 3 and 4</u> 1 January 2013	19 October 2016
Charge	(1) Desecrating the national flag by publicly and wilfully defiling it, contrary to section 7 of the National Flag and National Emblem Ordinance ("defiling the national flag"). (2) Desecrating the regional flag by publicly and wilfully defiling it, contrary to section 7 of the Regional Flag and Regional Emblem Ordinance ("defiling the regional flag"). (Page 13 of the judgment)	Attempting to desecrate the regional flag by burning it, contrary to section 7 of the Regional Flag and Regional Emblem Ordinance and Section 159G of the Crimes Ordinance (Cap. 200). (Paragraph 1 of the judgment)	(1) Defiling the national flag. (2) Desecrating the national flag by publicly and wilfully burning it, contrary to section 7 of the National Flag and National Emblem Ordinance. (3) Defiling the national flag. (4) Defiling the regional flag. (Paragraph 1 of the judgment)	(1) Defiling the national flag. (2) Defiling the regional flag.

<p>Damage to the flags</p>	<p><u>Charge 1</u></p> <p>At a public procession, the Defendants were waving a defaced national flag and a defaced regional flag. Regarding the national flag, a circular portion of the centre had been cut out. Black ink had been daubed over the large yellow five-pointed star and the star itself had been punctured. Similar damage appeared on the reverse side. The Chinese character "shame" had been written in black ink on the four small stars and on the reverse side, a black cross had been daubed on the lowest of the four small stars.</p> <p><u>Charge 2</u></p> <p>Regarding the regional flag, one section had been torn off with a portion of the bauhinia design obliterated. A black cross had been drawn across that design. Three of the remaining four red stars had black crosses daubed over them. The Chinese character "shame" was written on the flag in black ink, as was part of a Chinese character which had been rendered illegible by the tear in the flag. Similar damage appeared on the reverse side. (Page 14 of the judgment)</p>	<p>At a demonstration and procession, D1 and D2, who were in a crowd of people, individually or jointly set fire to the regional flag with a lighter or burning newspaper. Part of the burning newspaper landed on the hand/arm of the flag bearer. The fire was eventually put off by the police. (Paragraph 2 of the judgment)</p>	<p><u>Charges 1 and 2</u></p> <p>The Defendant was seen displaying a defaced national flag at a public meeting. The central part of the national flag was smeared with dirty marks by the Defendant, who later set fire to the flag by using burning papers and a lighter in the presence of a crowd of protestors. A major part of the flag was destroyed by fire. (Paragraph 8 of the judgment)</p> <p><u>Charges 3 and 4</u></p> <p>At another public procession, the Defendant was seen displaying a national flag and a regional flag. Both flags were smeared with black marks by the Defendant. Part of the regional flag was cut off with the result that part of the bauhinia petals was removed. (Paragraph 9 of the judgment)</p>	<p><u>Charges 1 and 2</u></p> <p>The Defendant inverted twice the national flags and regional flags erected on the desks of some Members at the Legislative Council meeting of 19 October 2016, which was an open meeting observed by members of the public and broadcast live on television and online.</p>
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<p>Sentence imposed by the trial magistrate :</p>	<p>The Defendants were convicted after trial by the trial magistrate, who ordered that each of the Defendants was to be bound over to keep the peace on his own recognizance of \$2,000 for each offence for a period of 12 months. (Page 13 of the judgment)</p>	<p>D1 and D2 were convicted after trial by the trial magistrate, and were sentenced to:</p> <p>D1: four months' imprisonment, suspended for two years; D2: 230 hours' community service. (Paragraph 1 of the judgment)</p>	<p>The Defendant was convicted after trial by the trial magistrate and was sentenced to:</p> <p>Charge 1: three months' imprisonment Charge 2: four months' imprisonment (Of the three months' imprisonment in charge 1, one month was to be served concurrently with that of charge 2, making a total sentence of six months' imprisonment for these two charges.)</p> <p>Charges 3 and 4: three months' imprisonment each (Both sentences were to be served concurrently, making a total sentence of three months' imprisonment for these two charges.) (Paragraph 2 of the judgment)</p> <p>The trial magistrate ordered that the whole of the six months' imprisonment for charges 1 and 2 were to be served consecutively to the three months' imprisonment for charges 3 and 4, making a total sentence of 9 months' imprisonment for the four charges. (Paragraph 3 of the judgment)</p>	<p>The Defendant was found guilty of the two charges after trial by the trial magistrate and fined \$2,500 on each of the two charges, making a total of \$5,000.</p>
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<p>Sentence after appeal</p>	<p>The Court of Final Appeal allowed the Prosecution's appeal and ordered the restoration of the conviction and the orders of the trial magistrate to bind over each of the two respondents to keep the peace on his own recognizance of \$2,000 for each offence for a period of 12 months. (Page 50 of the judgment)</p>	<p>The Court of First Instance ("CFI") dismissed the appeals against conviction by D1 and D2 but allowed their appeals against sentences. The sentences were varied as follow:</p> <p>D1: two months' imprisonment, suspended for one year; D2: 110 hours' community service. (Paragraph 48 of the judgment)</p>	<p>CFI allowed the appeal against sentence by the Defendant and varied the sentences as follow:</p> <p>Charge 1: one month's imprisonment Charge 2: four months' imprisonment (The two sentences were to be served concurrently, making a total sentence of four months' imprisonment for these two charges.)</p> <p>Charges 3 and 4: one and a half months' imprisonment each (The two sentences were to be served concurrently, making a total sentence of one and a half months' imprisonment for these two charges.)</p> <p>CFI ordered that the half month's imprisonment for charges 3 and 4 was to be served consecutively to the four months' imprisonment for charges 1 and 2, making a total sentence of four and a half months' imprisonment for these four charges. (Paragraph 5 of the judgment)</p>	<p>No appeal was filed.</p>
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